

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

UNITED STATES OF AMERICA	*	
	*	
V.	*	CRIM. NO. 1:09-CR- 15
	*	JUDGE HEARTFIELD
EDGAR BALTAZAR GARCIA	*	

NOTICE OF INTENT TO SEEK THE DEATH PENALTY

COMES NOW, the United States of America, by and through the United States Attorney for the Eastern District of Texas, and pursuant to Title 18, United States Code, Section 3593(a), and files this Notice of Intent to Seek the Death Penalty, notifying the Court and the Defendant, **EDGAR BALTAZAR GARCIA** that in the event the Defendant is convicted of the offense of murder as alleged in Count 1 of the Indictment of this case, the Government believes a sentence of death is justified, and the Government will seek a sentence of death under Count 1.

If the Defendant is convicted, the Government intends to prove the following aggravating factors as the basis for imposition of the death penalty under Count 1.

A. Statutory Factors Enumerated Pursuant to Title 18, United States Code, Section 3591(a)(2)

1. **EDGAR BALTAZAR GARCIA** was 18 years of age or older at the time of the offense. (18 U.S.C. § 3591(a));

2. **EDGAR BALTAZAR GARCIA** intentionally killed Gabriel Rhone. (18 U.S.C. § 3591(a)(2)(A));

3. **EDGAR BALTAZAR GARCIA** intentionally inflicted serious bodily injury that resulted in the death of Gabriel Rhone. (18 U.S.C. § 3591(a)(2)(B));

4. **EDGAR BALTAZAR GARCIA** intentionally participated in an act, contemplating that the life of Gabriel Rhone would be taken or intending that lethal force would be used in connection with Gabriel Rhone, a person other than a participant in the offense, and Gabriel Rhone died as a direct result of the act. (18 U.S.C. § 3591(a)(2)(C)); and

5. **EDGAR BALTAZAR GARCIA** intentionally and specifically engaged in an act of violence that **EDGAR BALTAZAR GARCIA** knew would create a grave risk of death to Gabriel Rhone, a person other than one of the participants of the offense, such that **EDGAR BALTAZAR GARCIA**'s participation in the act constituted a reckless disregard for human life, and Gabriel Rhone died as a direct result of the act. (18 U.S.C. § 3591(a)(2)(D)).

B. Statutory Aggravating Factors Enumerated Pursuant to Title 18, United States Code, Section 3592(c)

1. **EDGAR BALTAZAR GARCIA** has previously been convicted of two or more Federal or State offenses, punishable by a term of imprisonment of more than one year, committed on different occasions, involving the infliction of, or attempted infliction of, serious bodily injury or death upon another person, including but not necessarily limited to the following: on or about December 8, 1998, **EDGAR BALTAZAR GARCIA** was convicted in the 350th District Court, Taylor County, Texas, of Deadly Conduct; on or about April 9, 2004, **EDGAR BALTAZAR GARCIA** was convicted in the Western District of Virginia, of Possession of Contraband in Prison; and on or about October 23, 2007, **EDGAR BALTAZAR GARCIA** was convicted in the Eastern District of Texas, of Assault with a Dangerous Weapon with Intent to Commit Bodily Harm. (18 U.S.C. § 3592(c)(4));

2. **EDGAR BALTAZAR GARCIA**, in the commission of the offense, knowingly created a grave risk of death to one or more persons in addition to the victim of the offense. (18

U.S.C. §3592(c)(5));

3. **EDGAR BALTAZAR GARCIA** committed the offense described in Count 1 of the Indictment in an especially heinous, cruel, or depraved manner in that it involved torture or serious physical abuse to the victim. (18 U.S.C. § 3592(c)(6));

4. **EDGAR BALTAZAR GARCIA** committed the offense described in Count 1 of the Indictment after substantial planning and premeditation to cause the death of a person. (18 U.S.C. § 3592(c)(9)).

5. **EDGAR BALTAZAR GARCIA** has previously been convicted of two or more Federal or State offenses, punishable by a term of imprisonment of more than one year, committed on different occasions, involving the distribution of a controlled substance, including at least the following: on or about June 28, 2002, **EDGAR BALTAZAR GARCIA** was convicted in the Northern District of Texas of Conspiracy to Distribute and Possess with Intent to Distribute in excess of 5 kilograms of Cocaine, in excess of 500 grams of Methamphetamine, and in excess of 100 kilograms of Marihuana (offense dates: from 1996 to 1/08/2002); on or about June 28, 2002, **EDGAR BALTAZAR GARCIA** was convicted in the Northern District of Texas of Possession with Intent to Distribute Methamphetamine (offense dates: from 1/01/1998 to 1/22/1998); on or about June 28, 2002, **EDGAR BALTAZAR GARCIA** was convicted in the Northern District of Texas of Distribution of Methamphetamine (offense dates: from 7/18/1998 to 7/22/1998); on or about June 28, 2002, **EDGAR BALTAZAR GARCIA** was convicted of Distribution of Cocaine (offense dates: from 9/01/1999 to 9/02/1999); on June 28, 2002, **EDGAR BALTAZAR GARCIA** was convicted in the Northern District of Texas of Possession with Intent to Distribute Cocaine (offense dates: 3/09/2001 to 3/12/2001); and on or about June 28, 2002, **EDGAR BALTAZAR GARCIA** was convicted in the Northern District of Texas of

Possession with Intent to Distribute Cocaine Base (offense dates: 8/19/2001 to 8/22/2001). (18 U.S.C. § 3592 (c)(10));

6. **EDGAR BALTAZAR GARCIA** has previously been convicted of violating Title II or Title III of the Controlled Substance Act (21 U.S.C. §801, et seq.) for which a sentence of five or more years imprisonment may be imposed, namely, on or about June 28, 2002, **EDGAR BALTAZAR GARCIA** was convicted in the Northern District of Texas of Conspiracy to Distribute and Possess with Intent to Distribute in excess of 5 kilograms of Cocaine, in excess of 500 grams of Methamphetamine, and in excess of 100 kilograms of Marihuana; on or about June 28, 2002, **EDGAR BALTAZAR GARCIA** was convicted in the Northern District of Texas of Possession with Intent to Distribute Methamphetamine; on or about June 28, 2002, **EDGAR BALTAZAR GARCIA** was convicted in the Northern District of Texas of Distribution of Methamphetamine; on or about June 28, 2002, **EDGAR BALTAZAR GARCIA** was convicted of Distribution of Cocaine; on or about June 28, 2002, **EDGAR BALTAZAR GARCIA** was convicted in the Northern District of Texas of Possession with Intent to Distribute Cocaine; and on or about June 28, 2002, **EDGAR BALTAZAR GARCIA** was convicted in the Northern District of Texas of Possession with Intent to Distribute Cocaine Base. (18 U.S.C. § 3592 (c)(12)).

7. **EDGAR BALTAZAR GARCIA** intentionally killed or attempted to kill more than one person in a single criminal episode. (18 U.S.C. § 3592 (c)(16)).

C. Non-statutory Aggravating Factor Enumerated Pursuant to Title 18, United States Code, Section 3593(a)

1. **FUTURE DANGEROUSNESS.**

EDGAR BALTAZAR GARCIA is likely to commit criminal acts of violence in the

future that would constitute a continuing and serious threat to the lives and safety of others, as evidenced by, at least, one or more of the following:

a. Continuing Pattern of Violence

EDGAR BALTAZAR GARCIA has engaged in a continuing pattern of violence, attempted violence, and threatened violence, including, at least, the crimes alleged against defendant in the Indictment and the crimes of which the defendant was previously convicted, and the uncharged murder of Jacob Ponce on or about 1998; and

b. Institutional Misconduct

EDGAR BALTAZAR GARCIA poses a future danger to the lives and safety of other persons, as demonstrated by his repeated acts of institutional misconduct while in the custody of various state and local correction or detention agencies, the United States Bureau of Prisons, or United States Marshal's Service.

c. Lack of Remorse

EDGAR BALTAZAR GARCIA has demonstrated a lack of remorse for the capital offenses committed in this case, as indicated by defendant's statements and actions during the course of and following the offenses alleged in the Indictment.

d. Low Likelihood of Rehabilitation

EDGAR BALTAZAR GARCIA has demonstrated a low potential for rehabilitation as evidenced by his record of institutional misconduct and his longstanding involvement in criminal activities – including at least, the crimes of which he has been convicted in state and federal courts and the uncharged murder of Jacob Ponce – leading up to the capital offenses charged in the Indictment.

e. Membership in a Gang

EDGAR BALTAZAR GARCIA has demonstrated an allegiance to and active membership in an organization falling within the definition of criminal street gangs set forth in 18 U.S.C. § 521(a).

2. VICTIM IMPACT

As reflected by the victim's personal characteristics as a human beings and the impact of the offenses on the victim and the victim's family, **EDGAR BALTAZAR GARCIA** caused loss, injury, and harm to the victim and the victim's family (*see Payne v. Tennessee*, 501 U.S. 808, 825-827 (1991)) including, but not limited to, the fact that the victim's family suffered severe and irreparable harm.

3. VULNERABLE VICTIM

The victim was particularly vulnerable due to the fact that he was locked in a cell and devoid of any means with which to defend himself from the armed defendant.

The Government further gives notice that in support of imposition of the death penalty it intends to rely upon all the evidence admitted by the Court at the guilt phase of the trial and the offense of conviction as described in the Indictment as they relate to the background and character of the defendant, **EDGAR BALTAZAR GARCIA**, his moral culpability, and the nature and circumstances of the offenses charged in the Indictment.

Respectfully submitted,

REBECCA A. GREGORY
UNITED STATES ATTORNEY

/s/
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been furnished to Robert G. Morrow, Attorney for Defendant Edgar Baltazar Garcia, via electronic transmission on this the 4th day of February, 2009.

/s/

Joseph R. Batte

Assistant United States Attorney